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Message Text

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AMCONSUL MERIDA
AMCONSUL HERMOSILLO
AMCONSUL MAZATLAN
AMCONSUL NUEVO LAREDO
AMCONSUL MONTERREY
AMCONSUL MATAMOROS
CDRUSAADCENFB FT BLISS TX
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E.O. 11652: GDS
TAGS: CASC
SUBJECT: PROTECTION AND WELFARE OF US MILITARY PERSONNEL
CONFINED IN MEXICO.

REF: MEXICO'S 5090

1. DEPARTMENT AND DOD HAVE EXPLORED FULL RANGE OF QUESTIONS RAISED BY RECENT EVENTS IN MEXICO AND PROBLEMS OUTLINED REFTEL. BELIEVE WE HAVE REACHED CONCLUSIONS ON BASIC QUESTIONS REGARDING LEVEL OF PROTECTION TO BE AFFORDED US CONFIDENTIAL

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MILITARY PERSONNEL IN CONFINEMENT AND DIVISION OF RESPONSI-
BILITIES FOR PROVIDING OFFICIAL ASSISTANCE. EMBASSY'S
COMMENTS AND RECOMMENDATIONS ON THE FOLLOWING WOULD BE
WELCOMED, ESPECIALLY CONCERNING ANY SPECIFIC AND/OR SUB-

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STANTIVE MODIFICATIONS TO SUGGESTED PROCEDURES OUTLINED IN FINAL PARAGRAPH, NUMBER 6.

2. DEPARTMENT AND DOD FULLY CONCUR WITH EMBASSY VIEW THAT LEVEL OF SUPPORT PROVIDED TO US MILITARY PERSONNEL UNDER CHARGES IN COUNTRY SUCH AS MEXICO WHERE NO US FORCES ARE STATIONED AND WHERE THEIR STATUS IS THAT OF TOURIST OR VISITOR CANNOT BE AS GREAT AS SUPPORT WHICH DOD IS REQUIRED TO PROVIDE IN NATO AND OTHER COUNTRIES IN WHICH HOST GOVERNMENT HAS AGREED IN STATUS OF FORCES AGREEMENT TO THE PRESENCE OF TRIAL OBSERVERS AND THE ADHERENCE TO AGREED PROCEDURAL SAFEGUARDS. SUCH MILITARY PERSONNEL ARE ENTITLED TO PROTECTION WHICH ALL AMERICANS RECEIVE UNDER DEPARTMENT

REGULATIONS IMPLEMENTING 22 USC 1732 (7 FAM). HOWEVER, DOD HAS CONGRESSIONAL AUTHORITY (E.G., 10 USC 1037, 2734) TO PROVIDE ADDITIONAL SERVICES FOR MILITARY PERSONNEL WHICH DEPARTMENT IS NOT IN POSITION TO PROVIDE FOR AMERICAN TOURISTS GENERALLY, PARTICULARLY TO USE APPROPRIATED FUNDS FOR EMPLOYMENT OF COUNSEL, BAIL, PAYING MERITORIOUS CLAIMS FOR DAMAGES CAUSED BY THE PERSONNEL, EVEN WHEN OFF DUTY, AND PROVIDING MEDICAL CARE AND DIETARY SUPPLEMENTS. IN ORDER TO PROVIDE THESE SERVICES, DOD OFFICIALS MUST PERIODICALLY VISIT MILITARY PERSONNEL IN FOREIGN CONFINEMENT AND MAKE THE DETERMINATIONS REQUIRED BY DOD REGULATIONS TO SUPPORT THE EXPENDITURE OF APPROPRIATED FUNDS.

3. AUTHORITY TO PROVIDE PROTECTION AND WELFARE SERVICES TO US MILITARY PERSONNEL BEYOND THAT AVAILABLE TO OTHER AMERICANS ABROAD IS BASED IN PART ON THE NEED TO AVOID DAMAGE TO THE FOREIGN RELATIONS OF THE UNITED STATES BY FACILITATING THE PROMPT SETTLEMENT OF CASES AND AVOIDING DISPUTES ABOUT THE CONDITIONS OF CONFINEMENT. ANOTHER IMPORTANT BASIS FOR CONGRESSIONAL GRANTS OF AUTHORITY IN THIS AREA IS THE PATERNAL ROLE WHICH THE GOVERNMENT TRADITIONALLY PLAYS WITH REGARD TO MILITARY PERSONNEL, PARTICULARLY YOUNGER ENLISTED MEN. THEY ARE PROVIDED MANY CONFIDENTIAL

OF THE NECESSITIES OF LIFE, SUCH AS FOOD AND MEDICAL CARE, IN KIND, AND THEY MAY BE SEVERELY DISADVANTAGED IF THEY ARE CONFINED UNDER CONDITIONS WHERE NO MILITARY SUPPORT CAN BE PROVIDED. IN MANY CASES THEY ARE FAR REMOVED FROM THEIR OWN FAMILIES AS A RESULT OF THEIR MILITARY SERVICE, EVEN THOUGH THEY MAY BE ON LEAVE AT THE TIME OF THEIR ARREST.

4. IN COUNTRIES SUCH AS MEXICO, WHERE NO HOST GOVERNMENT AGREEMENT HAS BEEN OBTAINED REGARDING PROTECTION OF MILITARY PERSONNEL UNDER CHARGES, DOD PROVIDES SUCH SUPPORT AS IT IS ABLE TO PROVIDE, WITHIN THE LIMITS OF AVAILABLE RESOURCES AND WITHIN THE EXISTING POLITICAL AND PRACTICAL

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CONSTRAINTS. THE SERVICES ARE PROVIDED BY DOD TO ITS MEMBERS, AND NORMALLY REPRESENTATIONS TO LOCAL AUTHORITIES ARE NOT REPEAT NOT INVOLVED. IF SUCH REPRESENTATIONS ARE APPROPRIATE, THEY SHOULD BE MADE IN MEXICO BY THE DIPLOMATIC MISSION OR BY LOCAL CONSULAR OFFICIALS IF FEASIBLE AND NOT REPEAT NOT BY VISITING DOD OFFICERS. DOD HAS EXPERIENCED DIFFICULTIES WITH ONLY A FEW CASES IN NON-BORDER AREAS, BUT THE DIFFICULTIES HAVE BEEN SEVERE. THE SERVICE SECRETARIES HAVE RESPONDED TO NUMEROUS CONGRESSIONAL INQUIRIES IN THESE CASES AND THEY DESIRE ALL APPROPRIATE ASSISTANCE IN PROVIDING WHATEVER SUPPORT CAN BE MADE AVAILABLE IN THE CIRCUMSTANCES. SPECIFICALLY, DOD

DESIRE THAT THEIR OFFICERS BE PERMITTED TO VISIT THE ACCUSED FOR THE PURPOSES NOTED ABOVE, AND THAT THESE MILITARY PRISONERS BE INCLUDED WITHIN THE AMBIT OF ANY EFFORTS WHICH THE MISSION OR CONSULATE CAN MAKE TO ALLEVIATE THE CONDITION OF AMERICANS GENERALLY IN CONFINEMENT IN MEXICO AND EXPOSED TO THE WELL KNOWN EVILS OF DISHONEST COUNSEL, INADEQUATE CONFINEMENT FACILITIES, PAYMENT OF PROTECTION FEES, AND EXCESSIVE PROCEDURAL DELAYS.

5. DOD DIRECTIVES GENERALLY ASSIGN RESPONSIBILITY FOR PROTECTION OF MILITARY PERSONNEL IN NON-SOFA COUNTRIES TO THE DEFENSE ATTACHE. IN THE CASE OF MEXICO, ALL THREE SERVICES HAVE EXTENSIVE PERSONNEL AND OTHER ASSETS LOCATED IN US BUT CLOSE TO THE BORDER AND HISTORICALLY HAVE BEEN CONFIDENTIAL

ABLE TO MANAGE INCIDENTS OCCURRING CLOSE TO THE BORDER IN A LOW KEY MANNER WHICH HAS MET WITH THE APPROVAL OF LOCAL CIVILIAN OFFICIALS ON BOTH SIDES OF THE BORDER. DURING THE LAST YEAR A VERY SERIOUS CASE, THE NEWVINE MURDER CASE, WAS HANDLED IN A COOPERATIVE WAY WITHOUT POLITICAL DIFFICULTY, AND WE HOPE THESE PROCEDURES NEED NOT BE DISTURBED. IN NON-BORDER CASES COORDINATION WITH THE DIPLOMATIC MISSION OR CONSULATE IS CLEARLY REQUIRED. HOWEVER, IT DOES NOT SEEM APPROPRIATE TO ASK THE MISSION OR CONSULATE TO ASSUME ENTIRE RESPONSIBILITY FOR SUCH CASES, SINCE THE MILITARY AGENCIES ARE WELL EQUIPPED TO PROVIDE THEIR PEOPLE WITH THESE SERVICES FROM LOCATIONS IN THE SOUTHERN UNITED STATES. AMONG OTHER PROBLEMS, WE CAN FORESEE DIFFICULTIES IF THE MISSION OR CONSULATE WERE TO UNDERTAKE TO PROVIDE AN ENTIRELY DIFFERENT LEVEL OF OFFICIAL USG SUPPORT FOR THIS GROUP OF PRISONERS. ACCORDINGLY, WE BELIEVE THIS VERY SMALL BUT POTENTIALLY TROUBLESOME GROUP OF CASES SHOULD BE HANDLED ACCORDING TO THE PROCEDURES WHICH HAVE WORKED SATISFACTORILY IN THE PAST, THAT IS, THE RESPONSIBLE US MILITARY COMMANDS WILL PROVIDE APPROPRIATE SUPPORT IN FULL COORDINATION WITH THE DIPLOMATIC MISSION OR CONSULATE THROUGH THE DAO, WHO IS THE "DESIGNATED COMMANDING

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OFFICER" FOR MEXICO UNDER DOD REGULATIONS.

6. IN SUMMARY, DEPARTMENT AND DOD BELIEVE ALL INTERESTS ARE BEST SERVED BY EMPLOYING FOLLOWING PROCEDURES FOR CASES INVOLVING MILITARY TOURISTS IN MEXICO.

A. EXISTING PRACTICES FOR COOPERATION OF LOCAL OFFICIALS ON BOTH SIDES OF BORDER IN CASE OF BORDER INCIDENTS AND EVENTS SHOULD BE CONTINUED.

B. JUDGE ADVOCATES AND OTHER MILITARY REPRESENTATIVES, AS NECESSARY, MAY ENTER MEXICO FOR PURPOSE OF VISITING US MILITARY PERSONNEL IN MEXICAN CONFINEMENT AND PROVIDING SUPPORT AND PROTECTION CONTEMPLATED IN US STATUTES AND DOD IMPLEMENTING REGULATIONS, WHICH INCLUDE DOD DIRECTIVE 5525.1 AND JOINT SERVICE REGULATIONS. SUCH VISITS WILL BE COORDINATED WITH CONSULAR OFFICER IN DISTRICT WHERE THE SERVICEMAN IS CONFINED. MILITARY REPRESENTATIVES WILL NOT BE IN UNIFORM IN MEXICO. THEY WILL NOT MAKE OFFICIAL CONFIDENTIAL

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REPRESENTATIONS TO MEXICAN AUTHORITIES ABOUT PENDING CASES, AND AT ALL TIMES WHILE IN MEXICO WILL PERFORM THEIR FUNCTIONS SUBJECT TO THE DIRECTION OF THE DAO. IN NO REPEAT NO CASE WILL THEY ACT COUNTER TO THE ADVICE OF THE LOCAL CONSULAR OFFICER. ANY DIFFERENCES BETWEEN THEM AND THE LOCAL CONSUL SHOULD BE REFERRED PROMPTLY TO THE MISSION FOR RESOLUTION.

C. PRIOR CLEARANCE FROM US EMBASSY THROUGH THE DAO IS REQUIRED FOR VISITS BY US MILITARY REPRESENTATIVES TO NON-BORDER AREAS, IN ORDE
TO INSURE EMBASSY OPPORTUNITY TO ADVISE ON POLITICAL CONSIDERATIONS APPLICABLE IN PARTICULAR AREA AT THE TIME AND TO TAKE ANY SPECIAL PRECAUTIONS REQUIRED IN THE CIRCUMSTANCES. CLEARANCE WILL BE REQUESTED THROUGH PROCEDURES TO BE ESTABLISHED BY DAO, WHO WILL INSURE EXPEDITIOUS HANDLING OF CLEARANCE REQUESTS. WHERE POSSIBLE CLEARANCE BY EMBASSY SHOULD BE PROVIDED TELE-PHONICALLY, AND, IF IN EMBASSY'S JUDGMENT A PARTICULAR CASE RAISES NO UNUSUALLY SENSITIVE POLITICAL QUESTIONS, EMBASSY SHOULD BE ABLE TO GIVE CLEARANCE FOR ALL ROUTINE VISITS REQUIRED UNTIL THAT PARTICULAR CASE IS COMPLETED.

D. IT IS NOT REPEAT NOT CONTEMPLATED THAT DOD OFFICERS WILL "PRACTICE" MEDICINE OR LAW IN MEXICO IN THE PERFORMANCE OF THE SUPPORT REQUIRED BY DOD DIRECTIVES.
(I) WITH REGARD TO DOCTORS, IT WILL NOT ALWAYS BE NECESSARY FOR DOCTORS TO VISIT PRISONERS, AND IF DESIRED BY MEXICAN AUTHORITIES THEIR VISITS COULD BE SPECIALLY CLEARED, AS WAS DONE IN THE CASE OF THE VISIT BY USAF DOCTOR TO AIRMAN STOY. ALLEGATIONS OF ILL HEALTH IN THAT

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CASE INDICATED A MILITARY DOCTOR SHOULD VISIT THE PRISONER
TO DETERMINE WHETHER IT WAS NECESSARY TO RETAIN A MEXICAN
PHYSICIAN AT USG EXPENSE TO TREAT HIM ON A CONTINUING
BASIS, AND TO PROVIDE A RELIABLE REPORT ON HIS MEDICAL
CONDITION TO RESPOND TO CONGRESSIONAL INQUIRIES. IN ORDER
TO REMOVE ANY DOUBT ABOUT THE DOCTOR'S STATUS, PERMISSION

FOR THE VISIT WAS OBTAINED FROM THE MEXICAN CONSUL IN SAN
ANTONIO. WE WOULD OF COURSE PREFER TO AVOID THESE
FORMALITIES IF POSSIBLE, BUT WILL RESPECT EMBASSY'S JUDG-
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MENT ON THE MATTER, WHICH SHOULD BE REFLECTED IN CLEARANCE
PROCEDURES PRESCRIBED BY DAO.

(II) WITH REGARD TO TRIAL OBSERVERS, DOD REGULA-
TIONS PROHIBIT OBSERVERS FROM PROVIDING LEGAL ADVICE TO THE
ACCUSED OR OTHERWISE TAKING PART IN TRIAL PROCEEDINGS.
THE MATTER OF TRIAL ATTENDANCE AND REPORTS OF TRIALS
SHOULD BE RESOLVED ON A CASE BY CASE BASIS BETWEEN US
MILITARY AND CONSULAR OFFICIALS. PREFERABLE PROCEDURE
WOULD BE FOR US MILITARY OFFICER MAKING VISITS TO ATTEND
TRIAL AND TO SUBMTT HIS REPORT IN FORM OF "TRIAL OBSERVER
REPORT." WHERE THIS IS NOT FEASIBLE MILITARY COMMANDS
MAY REQUEST CONSUL TO PROVIDE BRIEF STATUS REPORTS ON CASE.
WE ASSUME THERE IS NO OBJECTION TO THIS SINCE NUMBER OF
CASES IS SO SMALL. KISSINGER

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MONTERREY
MATAMOROS
CDRUSAADCENFB FT BLISS TX
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